

REMARKS

This Amendment is responsive to the Office Action mailed on April 19, 2007. Claims 1-4, 7-10, 12, 14, 15, 17, 22-33 are amended. Claims 20 and 21 are cancelled. Claims 25, 26 and 29-33 are withdrawn. Claims 1-19 and 22-33 are pending.

The drawings have been objected to as failing to include all reference characters listed in the specification and as being of poor quality. Applicant submits herewith replacement drawings for Figures 1-6. Each drawing is now enlarged for clarity and included on a separate sheet. The attached sheets, which include Figures 1-6, replace the original drawing sheets for Figures 1-6. In Figures 2 and 3, the reference numeral "64" is changed to "60." In addition, reference numerals 104 and 108 are added to Figure 4. Reference numeral 150 is added to Figures 5 and 6.

Withdrawal of the objections to the drawings is respectfully requested.

Claims 1-24, 27 and 28 are objected to as being narrative and failing to conform to US practice. The claims are amended herein to overcome this objection, withdrawal of which is respectfully requested.

Claims 1-24, 27, and 28 are provisionally rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-25 of copending application no. 10/718,851, claims 1-26 of copending application no. 10/911,982, and claims 1-35 of copending application no. 11/702,258. In view of the amendments to the claims, Applicants respectfully request withdrawal of the provisional double patenting rejections. If these copending applications issue and the provisional rejections are maintained and converted to formal rejections, Applicants will file the appropriate Terminal Disclaimer(s) to overcome such rejections.

Claims 1-11, 13-24, 27 and 28 are rejected under 35 U.S.C. § 102(b) as being anticipated by Lerch (DE 199 52 359 C1).

Claims 1-20 are rejected under 35 U.S.C. § 102(b) as being anticipated by Bonutti (US 6,045,551).

Applicants respectfully traverse these rejections in view of the amended claims and the following comments.

Discussion of Amended Claims

Claim 1 is amended to include the subject matter of claims 20 and 21. Claims 20 and 21 are cancelled.

In addition, claims 1-4, 7-10, 12, 14, 15, 17, 22-24, 27, and 28 are amended for clarity and to overcome the Examiner's objections to the claims.

Withdrawn claims 25, 26 and 29-33 are also amended for clarity and to overcome the Examiner's objections to the claims.

Discussion of Lerch

Claims 1-11, 13-24, 27 and 28 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Lerch. This rejection is respectfully traversed. An anticipation rejection requires that each and every element of the claimed invention as set forth in the claim be provided in the cited reference. See *Akamai Technologies Inc. v. Cable & Wireless Internet Services Inc.*, 68 USPQ2d 1186 (CA FC 2003), and cases cited therein. As discussed in detail below, Lerch does not meet the requirements for an anticipation rejection.

DE 199 52 359 C1 to Lerch has a U.S. counterpart, US 2002/0156475 A1 as identified in Applicant's Information Disclosure Statement filed with the present application. In the discussion below, references are made to the U.S. counterpart of Lerch rather than the German language reference.

Claim 1 is amended to include the subject matter of original claims 20 and 21. In particular, claim 1 is amended to specify that one or more hook elements are provided for fixing the at least one tension band fixable relative to the outer abutment element. Further, it is clarified that the at least one tension band is fixable relative to the outer abutment element by penetration of the one or more hook elements into the at least one tension band.

With the present invention as set forth in amended claim 1, one or more tension bands are used for fixing the adjacent bone plates via the inner abutment element and the outer abutment

element. A tension band is easy for a surgeon to manipulate because it has a sufficiently large width for grasping and exerting tension. A tension band provides enough surface area to be able to effect fixing to the outer abutment element. One or more hooks can penetrate the tension band and therefore secure this fixed position (see, e.g., Applicants' specification, page 2, lines 14-20).

Accordingly, with Applicants' invention according to claim 1, it is possible to adjust the distance between the inner abutment element and the outer abutment element continuously (since no discretely spaced recesses are necessary), since the hook elements can penetrate at any position in the tension band.

In addition, the implant of Applicants' claim 1 is simple to manufacture since the inner abutment element and the outer abutment element can be manufactured separately from the tension band and the connection between tension band and abutment elements may easily be produced by threading the tension band through the abutment elements (see, e.g., Applicants' specification, page 2, lines 21-26).

For example, during insertion of a bone plate into a cranial recess the inner abutment element may be held by means of the tension band until the desired relative positioning of the bone plates is achieved. It is then possible afterwards to guide the outer abutment element by means of the tension band and hence effect the tensioning of the abutment elements (see, e.g., Applicants' specification, page 2, line 27 through page 3, line 4).

Lerch does not disclose or remotely suggest the use of a tension band. Applicants respectfully submit that reference numeral 28 of Lerch identified by the Examiner is a thread or wire (Para. 0086).

Further, Lerch does not disclose or remotely suggest hooks that can penetrate the tension band for fixing the tension band relative to an outer abutment element, as claimed by Applicants. The Examiner identifies the reference numerals 54, 72 of Lerch as hook elements. However, reference numeral 54 of Lerch denotes a peg element on which the thread or wire 28 is wound around (Para. 0095). Further, reference numeral 72 of Lerch is a clamping seat which is formed as a fixing recess into which the thread or wire 28 can be clamped in order to fix the latter in relation to a second bearing element 66 (Para. 0097).

Accordingly, Lerch does not disclose or remotely suggest the use of a tension band and fixing the tension band relative to the outer abutment element with one or more hooks which penetrate the tension band, as claimed by Applicants.

As Lerch does not disclose each and every element of the invention as claimed, the rejections under 35 U.S.C. § 102(b) are believed to be improper, and withdrawal of the rejections is respectfully requested. See, *Akamai Technologies Inc., supra*.

Discussion of Bonutti

Claims 1-20 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Bonutti. This rejection is respectfully traversed. An anticipation rejection requires that each and every element of the claimed invention as set forth in the claim be provided in the cited reference. See *Akamai Technologies Inc. v. Cable & Wireless Internet Services Inc.*, 68 USPQ2d 1186 (CA FC 2003), and cases cited therein. As discussed in detail below, Bonutti does not meet the requirements for an anticipation rejection.

Applicants' claim 1 is amended herein to include the subject matter of claims 20 and 21. The claim rejections under 35 U.S.C. 102(b) based on Bonutti do not involve pending claim 21.

Further, Bonutti does not disclose or remotely suggest the use of a tension band. Rather, reference numeral 38 of Bonutti identified by the Examiner is a suture (Col. 3, lines 4, 5).

Bonutti does not disclose or remotely suggest the use of a tension band and fixing the tension band relative to the outer abutment element with one or more hooks which penetrate the tension band, as claimed by Applicants.

As Bonutti does not disclose each and every element of the invention as claimed, the rejections under 35 U.S.C. § 102(b) are believed to be improper, and withdrawal of the rejections is respectfully requested. See, *Akamai Technologies Inc., supra*.

Applicants respectfully submit that the present invention is not anticipated by and would not have been obvious to one skilled in the art in view of Lerch or Bonutti, taken alone or in combination with any of the other prior art of record.

Further remarks regarding the asserted relationship between Applicants' claims and the prior art are not deemed necessary, in view of the foregoing discussion. Applicants' silence as to any of the Examiner's comments is not indicative of an acquiescence to the stated grounds of rejection.

Withdrawal of the rejections under 35 U.S.C. § 102(b) is therefore respectfully requested.

Conclusion

The Examiner is respectfully requested to reconsider this application, allow each of the pending claims and to pass this application on to an early issue. If there are any remaining issues that need to be addressed in order to place this application into condition for allowance, the Examiner is requested to telephone Applicants' undersigned attorney.

Respectfully submitted,



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Date: July 3, 2007